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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

5569/79071

I hereby certify that this Pre-Appeal Brief Request
For Review was electronically filed on March 3, 2008
using the USPTO Web.

on March 3, 2008

Signature 

Typed or printed name Timothy R. Baumann

Application Number

10/802,502

Filed

03/17/2004

First Named Inventor

Dana M. Brad

Art Unit

2624

Examiner

Wang, Claire X

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 40,502
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Timothy R. Baumann

Typed or printed name

312/577-7000

Telephone number

March 3, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Dana Brad et al.)	Confirmation No. 3667
)	
Appln. No.:	10/802,502)	
)	
Filed:	March 17, 2004)	This document is being filed electronically
)	using the USPTO's EFS-WEB
For:	Movable Barrier Operator With)	
	An Obstacle Detector)	
)	
Group Art Unit:	2624)	
)	
Examiner:	Claire X Wang)	

BRIEF IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Final Rejection dated October 4, 2007, please enter the following brief in support of the attached pre-Appeal Request for Review. A Notice of Appeal is also submitted herewith. Applicants hereby petition under 37 CFR § 1.136(a) for an extension of time for reply to and including March 4, 2008, and respectfully submit the following Pre-Appeal Request for Review, Brief in Support of Pre-Appeal request for Review, and Notice of Appeal.

REMARKS

I. Status of the Claims

Claims 1-25 are currently pending and stand rejected. Claims 14-19 and 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,841,780 to Cofer in view of U.S. Patent No. 6,218,962 to Fiene. Claims 1-12 and 21-22 were rejected as being unpatentable over U.S. Published Application No. 2003/0118237 to Laird in view of Cofer and further in view of Fiene. Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Laird in view of Cofer. Claims 20 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cofer in view of Laird. For at least the reasons stated below, the Applicants assert that the rejections are clearly erroneous and should be reversed.

II. Claims 14-19 and 23-24 are not Unpatentable over Cofer and Fiene

Cofer describes a system that detects the presence of objects in a monitored area. One or more complex patterns of light are projected onto the monitored area. Changes in the complex patterns are detected in the monitored area and these changes indicate the presence of an object in the monitored area. See Cofer, Abstract.

More specifically, a moiré interference pattern is projected onto the monitored area. The moiré interference pattern may be created in several ways. For example, two complex patterns of light may be projected onto the same area. Additionally, one pattern may be projected onto the monitored area while another may be imposed by a pattern grating positioned in the image plane of an image capture device. Further, two images of the same pattern in the same area may be captured and rotated. See Cofer, FIGs. 5a-c and col. 2, lines 1-39. Consequently, Cofer does not teach or suggest the projection of a straight line of light in the absence of an obstruction.

The Examiner admitted that the Cofer reference does not teach the projection of a straight line of light in the absence of an obstruction as recited in claim 14. The Examiner, however, stated that the Fiene reference taught this limitation. The Examiner further asserted that “it would have been obvious to combine Cofer’s teaching of projecting a pattern to detect intrusion in a garage system with Fiene’s line-shaped light pattern since... a light source that only display[s] a light pattern is well know.” The Applicant disagrees with these conclusions and asserts that independent claim 14 is not rendered obvious by the proposed combination.

The Fiene reference describes a system for helping a driver park their car in a garage at a specified location; Fiene is specifically not concerned with detecting a presence of an obstacle. As shown in FIG. 1 of Fiene, a line of light 24 is projected down from the operator 22. The driver knows from experience that when the line hits a particular spot on the car, the car is in the correct parked position. Fiene's use of the line of light does not and will not vary regardless of whether an obstacle is present or not; in either case, his light will be provided to encourage the driver of the vehicle to park their car at a specified location.

Fiene, in fact, teaches away from using the line of light for obstruction detection. More specifically, Fiene teaches that the line of light must only be projected for only a short period of time when the driver parks the car. Fiene, col. 5, lines 4-8. More specifically, Fiene teaches that the line of light 24 only is turned on with a courtesy light as also comprises a part of the operator or only when the operator is activated by the remote transmitter. Fiene, col. 3, lines 36-38. Consequently, obstruction detection is not provided at all other times, which would amount to the vast majority of the day. Furthermore, the Fiene system does not project the light if operated from a push button wall control. Fiene, col. 5, lines 9-16. Fiene specifically teaches that the line of light is *not* projected at these times since children are likely present in the garage and it is desired to avoid children looking at the light. Consequently, the system does not provide obstruction detection (and needed safety protection) during these time periods, which are likely very substantial in length.

It is not proper to combine references if there is a teaching against the proposed combination or modification. See MPEP 2141. In the present case, Fiene teaches away from using the line of light in an obstruction detection system as claimed for at least the reasons noted. For this reason, the Applicant asserts that Fiene and Cofer can not be properly combined and that claim 14 is not rendered obvious over the proposed combination. Instead, the Applicants respectfully submit that a fair combination of Cofer with Fiene will yield a system that employs Cofer's complicated light patterns for a first purpose of detecting obstacles and Fiene's line of light for a second purpose of directing a driver to a proper parking location; this combined result is very different from that which the Applicants present in claim 14 and one can only achieve the claimed result by employing the Applicants' own teachings, using impermissible hindsight, to effect a selective picking and choosing amongst the teachings of two references.

Independent claims 18 and 23 have recitations similar to claim 14 and it is asserted that these claims are allowable for the same reasons as claim 14. Claims 15-17 depend upon claim 14, claim 19 depends upon claim 18, and claim 24 depends upon claim 23. Since claims 14, 18, and 23 have been shown to be allowable, it is asserted that these dependent claims are also allowable.

III. Claims 1-12 and 21-22 are not Unpatentable over Laird, Cofer, and Fiene

Independent claims 1, 21, and 22 have recitations similar to claim 14 and were rejected over the Laird, Cofer, and Fiene combination. The Cofer and Fiene references have been discussed above. Laird corrects none of the deficiencies of Cofer or Fiene. More specifically, Laird does not teach or suggest the projection of a single straight line of light as recited in claims 1, 21, and 23, much less the projection of a substantially straight line in the absence of an obstruction. In fact, because there is no image projection device, nothing can be projected in Laird. In addition, Laird does not teach or suggest determining when the single straight line of line changes as is also recited in claim 1. For these reasons, the Applicants assert that claims 1, 21, and 23 are allowable for the same reasons as claim 14.

Claims 2-12 depend upon claim 1, which has been shown to be allowable for the reasons stated above. Consequently, the Applicants assert that claims 2-12 are allowable for the same reasons as given above with respect to claim 1.

IV. Claim 13 is not Unpatentable over Laird, Cofer

Claim 13 depends upon claim 1 and is rejected over Laird and Cofer. Because of its dependence on claim 1, claim 13 recites the projection of a straight line in the absence of an obstruction. However, for the reasons stated above, neither Laird nor Cofer teach or suggest the projection of a straight line in the absence of an obstruction. Consequently, the Applicants assert that claim 13 is allowable over the proposed combination.

V. Claims 20 and 25 are not Unpatentable over Cofer in view of Laird

Claim 20 depends upon claim 18 and is rejected over Cofer and Laird. Claim 25 depends upon claim 23 and is also rejected over Cofer and Laird. Because of their dependency on claims 18 and 23, claims 20 and 25 recite the projection of a line that is straight in the absence of an obstruction. However, for the reasons stated above, neither Laird nor Cofer teach or suggest the projection of a straight line in the absence of an obstruction. Consequently, the Applicants assert that claims 20 and 25 are allowable for the same reasons as given above with respect to claim 18.

VI. Conclusion

The Applicant submits that there is at least one clear error of law that is sufficient to require reconsideration and reversal of the rejection of the pending claims.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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By: 

Timothy R. Baumann
Registration No. 40,502

120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603
Telephone: (312) 577-7000
Facsimile: (312) 577-7007